



**BILLING CODE: 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Parts 1209 and 1250**

**RIN 2590-AA88**

**Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Interim final rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing this interim final rule amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. If, prior to the effective date of the interim final rule, FHFA does not receive any comments from which FHFA concludes that the rule should be revised, this rule will become final without further action by FHFA.

**DATES:** Effective date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

Comment date: Comments on the interim final rule must be received prior to **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** You may submit your comments, identified by regulatory information number (RIN) 2590-AA88, by any of the following methods:

Agency Web site: [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by email to FHFA at [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov) to ensure timely receipt by the agency. Please include “RIN 2590-AA88” in the subject line of the message.

Hand Delivery/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA88, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA88, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20219.

Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, or phone number, on the FHFA Internet Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh

Street, SW, Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

**FOR FURTHER INFORMATION CONTACT:** Stephen E. Hart, Deputy General Counsel, at (202) 649-3053, Stephen.Hart@fhfa.gov, or Frank R. Wright, Senior Counsel, at (202) 649-3087, Frank.Wright@fhfa.gov (not toll-free numbers); Federal Housing Finance Agency, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is: (800) 877-8339 (TDD only).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FHFA is an independent agency of the Federal government and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), the Federal Home Loan Banks (collectively, the Banks), and the Banks' Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).<sup>1</sup> FHFA oversees the Enterprises and Banks (collectively, the regulated entities) to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules, and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.<sup>2</sup>

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<sup>1</sup> See Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Public Law No. 102-550, 106 Stat. 4078 (Oct. 28, 1992) as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Public Law No. 110-289, 122 Stat. 2654, sections 1101 et seq. (July 30, 2008).

<sup>2</sup> See Safety and Soundness Act, 12 U.S.C. 4513 and 4631-4641.

Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA's Rules of Practice and Procedure regulation (12 CFR part 1209) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.<sup>3</sup> FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.<sup>4</sup> FHFA's Implementation of the Program Fraud Civil Remedies Act of 1986 regulation (12 CFR part 1217) sets forth procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act (31 USC 3801 et seq.) on any person that makes a false claim for property, services or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed \$150,000.<sup>5</sup>

### **The Adjustment Improvements Act**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (“Inflation Adjustment Act”), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“Adjustment Improvements Act”), requires FHFA, as well as other Federal agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.<sup>6</sup> The Adjustment Improvements Act requires agencies to make an initial “catch-up” adjustment of their CMPs upon the statute’s enactment, and further requires agencies to make additional adjustments on an annual basis following the initial

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<sup>3</sup> See 12 CFR part 1209.

<sup>4</sup> See 12 CFR part 1250.

<sup>5</sup> See generally, 31 U.S.C. 3801 et seq.

<sup>6</sup> See 28 U.S.C. 2461 note.

adjustment.<sup>7</sup>

The Adjustment Improvements Act provides that the initial catch-up adjustment must be implemented by an interim final rule and will be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for October 2015 and the CPI-U for the month of October in the year that the civil money penalty was established or adjusted under a provision of law other than the Inflation Adjustment Act. Previous inflation adjustments made under the Inflation Adjustment Act prior to the Adjustment Improvements Act are not considered in making the catch-up adjustment.<sup>8</sup> In the future, annual inflation adjustments will be based on the percent change between the October CPI-U preceding the date of the adjustment and the October CPI-U for the year before that.

## **II. Differences between the Federal Home Loan Banks and the Enterprises**

When promulgating any regulation that may have future effect relating to the Banks, the Director is required by section 1313(f) of the Safety and Soundness Act to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability (12 U.S.C. 4513(f)).<sup>9</sup> The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that this interim final rule is appropriate. In sum, the five differences identified in section 1313(f) of the

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<sup>7</sup> The Adjustment Improvements Act superseded the Debt Collection Improvement Act of 1996, which was used to prepare FHFA's Civil Money Penalty Inflation Adjustment rule, published at 81 FR 8369 (February 22, 2016.).

<sup>8</sup> Earlier inflation adjustments such as those issued in 81 FR 8369 are not considered in determining the amount of the catch-up adjustment.

<sup>9</sup> So in original; no paragraphs (d) and (e) were enacted. See 12 U.S.C.A. 4513 n 1.

Safety and Soundness Act do not require a different enforcement regulation for the Banks than for the Enterprises, and in any event, the inflation adjustments effected by the interim final rule are mandated by law.

### **III. Description of the Rule**

This interim final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR § 1209.80 to reflect the new adjusted maximum penalty amount that FHFA may impose upon a regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this interim final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation, which may not be the maximum that the law allows; FHFA would calculate each CMP on a case-by-case basis in light of a variety of factors.<sup>10</sup> This rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR § 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation. FHFA has adjusted the maximum amounts for penalties under the Program Fraud Civil Remedies Act in a separate rule required by that Act, which was also published today in this edition of the Federal Register.

The Adjustment Improvements Act directs federal agencies to calculate each initial catch-up CMP adjustment as the percent change between the CPI-U for October 2015 and the CPI-U for October of the calendar year in which the amount of each CMP

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<sup>10</sup> See, e.g., 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013-03 (May 31, 2013).

was set<sup>11</sup>. The maximum CMP amounts for FHFA penalties under 12 U.S.C. 4636 were set in 2008.<sup>12</sup> Since FHFA is making this round of catch-up adjustments in calendar year 2016, and the maximum CMP amounts were last set in calendar year 2008, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI-U for October 2008 with the CPI-U for October 2015, resulting in an inflation factor of 1.09819. For each maximum CMP amount, the product of this inflation adjustment and the previous maximum penalty amount was then rounded to the nearest whole dollar as required by the Adjustment Improvements Act, and was then summed with the previous maximum penalty amount to determine the new adjusted maximum penalty amount.<sup>13</sup> The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	10,000	982	10,982
12 U.S.C. 4636(b)(2)	Second Tier	50,000	4910	54,910
12 U.S.C. 4636(b)(4)	Third Tier (Entity-affiliated party and Regulated entity)	2,000,000	196,380	2,196,380

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<sup>11</sup> For the initial adjustment under the Adjustment Improvements Act a CMP is considered to have been set in the calendar year during which the amount of such CMP was established or adjusted under a provision of law other than the Inflation Adjustment Act.

<sup>12</sup> See 12 U.S.C. 4636.

<sup>13</sup> 28 U.S.C. 2461 note.

The CMP for FHFA penalties under the Flood Insurance regulation were set in 2009.<sup>14</sup> Since FHFA is making this round of adjustments in calendar year 2016, and the maximum CMP amounts were last set in calendar year 2009, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI-U for October 2009 with the CPI-U for October 2015, resulting in an inflation factor of 1.10020. The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
42 U.S.C. 4012a(f)(5)	Maximum penalty per violation	485	49	534
42 U.S.C. 4012a(f)(5)	Maximum total penalties assessed against an Enterprise in a calendar year	140,000	14,028	154,028

#### **IV. Regulatory Impact**

##### Administrative Procedure Act

FHFA finds good cause that notice and an opportunity to comment on this interim final rule are unnecessary under section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This rulemaking conforms with and is consistent with the statutory directive set forth in the Inflation Adjustment Act. As a result, there are no issues of policy discretion about which to seek public comment. Furthermore, the rule is

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<sup>14</sup> See 74 FR 2347, 2349 (Jan. 15, 2009).



mandated by the Adjustment Improvements Act to be adopted in interim final form.

Accordingly, FHFA is issuing the amendments as an interim final rule.

In addition, FHFA finds good cause to make this rule effective thirty days after publication of this document in the **Federal Register** under the APA. The rule adjusts the amount of each CMP tier as dictated by the Inflation Adjustment Act, and, as noted above, is mandated by the Adjustment Improvements Act to be adopted as an interim final rule, presumptively with no greater delayed effective date than the APA otherwise provides.

#### Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),<sup>15</sup> an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have “a significant economic impact on a substantial number of small entities.” However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA,<sup>16</sup> and FHFA is required by statute to issue this rule as an interim final rule. As a result FHFA has determined for good cause that the APA does not require a general notice of proposed rulemaking for this rule. Thus, the RFA does not apply to this interim final rule.

#### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB

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<sup>15</sup> 5 U.S.C. 603.

<sup>16</sup> 5 U.S.C. 603(a), 604(a).

approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

## **List of Subjects**

### 12 CFR Part 1209

Administrative practice and procedure, Penalties.

### 12 CFR Part 1250

Flood insurance, Government-sponsored enterprises, Penalties, Reporting and record keeping requirements.

Accordingly, for the reasons stated in the **Supplementary Information** and under the authority of 12 U.S.C. 4513b and 12 U.S.C. 4526, the Federal Housing Finance Agency hereby amends subchapters A and C of chapter XII of Title 12 of the Code of Federal Regulations as follows:

## **PART 1209 —RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 1209 continues to read as follows:

**Authority:** 5 U.S.C. 554, 556, 557, and 701 et seq.; 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581-4588, 4631-4641; and 28 U.S.C. 2461 note.

2. Revise § 1209.80 to read as follows:

### **§ 1209.80 Inflation adjustments.**

The maximum amount of each civil money penalty within FHFA's jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

U.S. Code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	\$10,982
12 U.S.C. 4636(b)(2)	Second Tier	\$54,910
12 U.S.C. 4636(b)(4)	Third Tier (Regulated Entity or Entity-Affiliated party)	\$2,196,380

3. Revise § 1209.81 to read as follows:

**§ 1209.81 Applicability.**

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and C of this part, for violations occurring after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**PART 1250 —FLOOD INSURANCE**

4. The authority citation for part 1250 continues to read as follows:

**Authority:** 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

5. Revise § 1250.3(c) to read as follows:

**§ 1250.3 Civil money penalties.**

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(c) Amount. The maximum civil money penalty amount is \$485 for each violation that occurs before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, with total penalties not to exceed \$140,000. For violations that occur on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the civil money penalty under this

section may not exceed \$534 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed \$154,028.

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Melvin L. Watt, Dated: June 27, 2016.  
Director, Federal Housing Finance Agency.  
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